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UNCLAS SECTION 01 OF 06 CAIRO 001262

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SUBJECT: EGYPT: 2006 SPECIAL 301 REVIEW

REF: STATE 14937

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Summary and Recommendation

1. (SBU) Over the past year, the Government of Egypt has made progress in strengthening its intellectual property rights (IPR) regime. It issued the final set of implementing regulations for its 2002 IPR law, established new offices to license copyrighted materials, and cleared up a backlog of trademark applications. Problems, however, remain, especially with enforcement and protection of copyright and pharmaceutical test data. Overall, these problems are significant enough to warrant retaining Egypt on the Priority Watch List for 2006. End summary and recommendation.

Overall Assessment of IPR Climate

2. (SBU) While Egypt enacted a comprehensive IPR law in 2002, as well as other laws and regulations that create a legal basis for effective IPR protection, these laws have not been fully implemented, supporting regulations are flawed, and enforcement remains generally weak. There has been notable progress on the IPR front over the past year -- especially in areas where the USG has provided technical assistance -- but problems remain. Details of both the progress made and the deficiencies that remain are provided below.

Optical Media Piracy

3. (SBU) Optical media piracy affects most categories of intellectual property rights, including motion pictures, sound recordings, and computer software. In March 2005, implementing regulations were issued for Book Three (copyrights and related issues) of Egypt's IPR law, which affect all these media. Unfortunately, these regulations are flawed in certain fundamental ways. For example, rather than clearly transferring enforcement responsibility for software and database infringement to the Ministry of Communication and Information Technology (MCIT), the regulations maintain an enforcement role for the Ministry of Culture in that area while also creating one for MCIT. As a result, the regulations have caused confusion for the ministries and rights-holders alike. Until the Ministry of Justice resolves this issue, the ambiguity is likely to impede serious software piracy enforcement efforts.

4. (SBU) Major U.S. software and computer companies operating in Egypt report a piracy rate in business software under 20 percent for large companies in Egypt. The most serious problem is now software piracy by medium and small enterprises, and by computer retailers, who load pirated software onto their products. Counterfeiting of software in Egypt is not currently a problem, according to industry sources. Virtually all the counterfeit business software used in Egypt is produced abroad, according to the Business Software Alliance.

False Licensing

5. (SBU) False licensing remains a problem and undermines copyright protection in Egypt. Pirates are

often able to receive authorization to distribute software, music, and films from the Ministry of Culture based on forged documents purporting to give them this right. The GOE does not have the ability to authenticate these documents, but revokes its authorizations when the products are proven to be pirated. In April 2005, MCIT created an "IPR Office" under the new Information Technology Industry Development Agency (ITIDA) to provide authorized licenses for, and to register newly developed software and databases. These databases will be used to support enforcement efforts should the confusion over which ministry has enforcement authority for software be resolved (see paragraph 3).

Printed Material Piracy

16. (SBU) Book piracy continues to be a problem in Egypt. In 2005, the Supreme Council of Culture created a specialized Office for the Protection of Author's Rights to process licenses for reprinting scientific or scholastic books according to specific criteria. To date, no reprint requests have been filed, suggesting that piracy in this area will not abate simply because there are now clear procedures in place for obtaining permission to reprint books. This new office has no investigative or enforcement responsibilities, as those duties remain in the purview of the anti-piracy unit of the police.

IPR Enforcement

17. (SBU) IPR enforcement is executed jointly by the police force under the Ministry of Interior and inspectors from the Ministry of Trade and Industry, in coordination with other relevant ministries and authorities. Even though the number of trained inspectors increased in 2005, their number and the physical resources available to them are still insufficient for conducting effective raids on software pirates. If this resource problem were addressed, effective enforcement of copyright protection might significantly improve. The Ministry of Trade and Industry recently established a procedure for seizing counterfeit goods at the port of entry. Its effectiveness is still being determined.

18. (SBU) The Ministry of Culture has enforcement responsibilities for pirated motion pictures, sound recordings, and possibly software (see paragraph 3). Over the past year, the number of trained inspectors doubled, and the ministry investigated 527 cases, compared to the 328 investigated in 2004. Ministry officials, however, recognize the need for greater enforcement, but maintain that their efforts are hindered by the lack of advanced equipment and effective coordination with other government entities. Entertainment companies concur, complaining of escalating piracy and weak enforcement. They have tried self-help measures, purchasing and presenting pirated goods to the police to encourage them to take action. Although the counterfeiters are sometimes arrested, often they are back in operation within days.

19. (SBU) A "General Department for Customs Relations and Clearance" has recently been established in the Ministry of Trade and Industry to receive border measures complaints in collaboration with the Egyptian Customs Authority. Although it is a new department, it has already acted on a number of complaints. The USAID-funded Assistance for Trade Reform and Intellectual Property Rights Assistance projects have been providing training to this new unit.

110. (SBU) The General Department for IPR Protection in the Ministry of Trade and Industry receives and investigates trademark and industrial designs infringement complaints. The unit investigates infringement complaints only for marks and designs that are registered in Egypt. It takes samples of allegedly infringing goods, decides on their authenticity, and turns over cases of suspected infringement to the General Prosecutor's office.

111. (SBU) Egypt has not signed the WIPO Copyright Treaty (WCT) or the WIPO Performance and Phonograms Treaty (WPPT). As a major producer of Arabic entertainment, Egypt could benefit from these treaties. However, the GOE has not shown interest in joining either treaty.

TRIPS Compliance

112. (SBU) As a signatory of the WTO Trade Related Aspects of International Property Rights (TRIPS) agreement, Egypt is required to provide protection to foreign IPR-holders operating in Egypt. Overall, infringement of trademark, and industrial designs has decreased in 2005 in comparison to 2004, yet problems persist.

113. (SBU) A USAID-funded project working on IPR issues assisted the Commercial Registration office (which includes both trademark and industrial designs departments) to modernize its operations, improve its management through specialized training, and increase the efficiency and effectiveness of its staff.

114. (SBU) The trademark office has shown significant improvement this past year. It successfully processed almost 38,000 backlog trademark cases, created a database that includes all registered, renewed or still processed cases, and reduced the registration period from 63 to 9 months (which is below the international standard).

115. (SBU) The industrial designs office has also showed significant improvement this year. The office, however, has yet to implement a planned computerized database of national and international bibliographic and industrial designs that would allow inspectors to quickly identify infringements. The current manual search method is onerous and time-consuming.

Patent Protection

116. (SBU) A modern, computerized Egyptian Patent Office operating under the authority of the Ministry of Higher Education and Ministry of State for Scientific Research is now capable of processing and ensuring the protection of patent applications. Processing times have been reduced from an average of five years to between 18 and 25 months. This office has significantly improved the quality and transparency of the trademark and industrial design registration system. Egypt has agreed to join the WIPO Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure by 2007.

117. (SBU) Egypt continues to take advantage of numerous technical assistance training opportunities offered by the United States Patent and Trademark Office on topics such as computerized patent and trademark application searching, patent, trademark, and design application examination, and the processing of applications under the Patent Cooperation Treaty (PCT). The PCT, which came into force in September 2003, allows local and international applicants to protect their inventions in many countries by filing a single application and designating the countries where the invention will be protected. Since Arabic has recently become a PCT language, Egypt's membership in the PCT permits Egyptian applicants to file their application in the Arabic language with the Egyptian Patent Office and to have an international search and examination report sent to all designated patent offices. This helps both Egyptian and foreign applicants capture their local markets and also easily designate their applications to apply in the two largest world markets, the U.S. and Europe. Egypt can now serve as a receiving office for neighboring countries for Arabic-language applications.

Protection for Plant Varieties

118. (SBU) In October 2004 the Ministry of Agriculture established a new plant variety registration office. However, the relevant provisions of the IPR law concerning new plant varieties are not being implemented because the Egyptian National Gene Bank, which certifies the novelty of new varieties, has not been established. Without this office, creators of new plant varieties are reluctant to file applications for certification. Another issue of concern is the lengthy application process. In order to prove the Distinguished Unity and Stability of plant variations and novelty, plant seeds have to be planted for two consecutive seasons to guarantee its originality (e.g., consistent size, shape, appearance). The GOE is undertaking reforms necessary to join the International

Market Access for Intellectual Property

19. (SBU) Market access for some forms of intellectual property is still problematic in Egypt. Foreign motion pictures are subject to duties and import taxes (32 percent on each copy of the movie, 12 percent on posters and 2 percent on the movie reel), as well as a 10 percent sales tax and a 20 percent box office tax (compared to a five percent box office tax for local films). Foreign motion pictures are subject to a screen quota and distributors are allowed to import only five prints of any foreign film, although occasionally seven copies may be allowed. The issuance of approvals and certificates to license films and entertainment software can be lengthy and cumbersome. Tariffs on some information technology products were reduced in 2004 following the signing of the WTO Information Technology Agreement mandating the removal of tariffs on information technology (IT) products but full implementation of the agreement is still underway.

Pharmaceutical IPR Protection

20. (SBU) IPR protection and pricing remain areas of concern in the pharmaceutical sector. The Ministry of Health and Population negotiates with companies to set and adjust pharmaceutical prices using a cost-plus formula. The Ministry has been slow to adjust pharmaceutical prices to compensate for significant depreciation of the Egyptian pound since 2000. In September 2004, the government lowered customs duties on most imported pharmaceutical inputs from 10 percent to 2 percent. The government claims this step compensates pharmaceutical companies operating in Egypt for some of their losses from the devaluation. In November 2004, restrictions on exporting pharmaceuticals were removed to encourage pharmaceutical investment and exports. Pharmaceutical companies rely, however, on the domestic market for a significant part of their operations, and the creation of a transparent, systematic, and fair process for pricing is therefore crucial.

21. (SBU) GOE marketing approval for generic copies of protected pharmaceutical products remains a serious issue. In 2004, GOE approval for generic copies of four protected pharmaceutical products was a main reason for Egypt's elevation to the Priority Watch List. In-depth discussions held under the auspices of the Trade and Investment Framework Agreement reveal serious differences between the USG's and the GOE's interpretation of TRIPS obligations, especially regarding the provisions on data exclusivity and unfair commercial use. That said, for most of 2005 the GOE did not act on marketing approvals for generic copies. In December, however, the outgoing Minister of Health and Population authorized a local generic copy of an innovator drug for which a U.S. company claimed IPR protection. Prior to the approval, the company took every available step to enforce its intellectual property rights, including filing a patent application with Egyptian officials, obtaining a five-year exclusive marketing right certificate (which was subsequently overturned in court on a technicality), and then filing an appeal, which was pending when the local generic copy was approved. The Ambassador protested this approval with the new Minister of Health and Population.

Government Software

22. (SBU) Since 2004, the GOE has been taking steps to promote the use of only legitimate business software by government departments and state schools. To encourage use of licensed software, Microsoft -- a major supplier of software in Egypt for the government and private sector -- launched a program in 2004 to sell licenses on credit. Industry representatives express satisfaction with the level of legitimate software use in the government.

IPR Technical Assistance

23. (SBU) A USAID-funded Intellectual Property Rights Assistance project (IPRA) is working with several Egyptian Ministries to strengthen IPR enforcement and

increase public awareness. Program reports indicate an increase in police and Ministry of Culture involvement in IPR protection in 2005 over the previous year. The USAID program is working with the Ministry of Justice on IPR enforcement issues, and in particular is working with judges to increase legal awareness and capacity building for infringement cases. The program works with law schools in five Egyptian universities to increase awareness and training on IPR issues. As noted in paragraph 14, the program worked with the Government of Egypt to set up a specialized IPR unit and modernize the trademark office providing technical assistance to in-house inspectors. The pace of approval of trademark applications has risen dramatically according to IPRA project implementers -- from approximately 12 to over 100 approvals a day.

¶24. (SBU) Some of the courses and programs that the USAID-funded program organized in Egypt and abroad include:

- Training for government officials and journalists on IPR principles and practice;

- Training at Egyptian universities and the American University in Cairo on IPR;

- Training for judges on IPR issues;

- Training for government employees at the Patent Office on the PCT and on drafting patent claims;

- Training for trademark employees;

- Training for Internet security issues;

- Workshops and media events to raise IPR awareness in the government, private sector, and the general public.

IPRA also:

- Is preparing for an online patent application and tracking process, due to be fully operational by mid 2006;

- Is helping the Ministry of Culture implement the new law for the Protection of Author's Rights;

- Is providing reference guides to the GOE's industrial designs and trademark departments;

- Successfully negotiated with WIPO to supply free software and uncharged maintenance for life to Egypt's Commercial Registration Administration.

Recommendation

¶25. (SBU) As noted above, there have been positive developments in IPR protection in Egypt, especially related to improving the operations of government offices charged with registering the property of rights-holders. Problems still persist, however, especially in the critical areas of enforcement and protection of copyright and pharmaceutical test data. The marketing approval for a generic local copy of U.S. pharmaceutical product was a significant setback, as it appeared, until that point, that the GOE had finally understood the importance of the issue and was refraining from issuing further approvals. The presence of a new business-oriented Minister of Health and Population may have a positive impact on IPR protection of pharmaceuticals. At present, however, we have to conclude that the positive developments this past year are not sufficient to outweigh the significant continuing problems. Therefore, post recommends that Egypt be retained on the Priority Watch List for 2006.

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